

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

**ANDREW ERDOS, DAVID ANDERSON,
and VALLEY VIEW MHP LLC,
individually and on behalf of all
others similarly situated,**

Plaintiffs,

V.

NORFOLK SOUTHERN CORPORATION; NORFOLK SOUTHERN RAILWAY COMPANY; JOHN DOE(S) 1-20; and ABC CORP(S). 1-20,

Defendants.

Case No. 4:23-cv-00268

JOINT NOTICE REGARDING SAMPLING AT THE DERAILMENT SITE FOLLOWING HEARING ON TEMPORARY RESTRAINING ORDER

Pursuant to the Court's request during the February 27, 2023 hearings on Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction, the parties reached the following agreement. The terms of this agreement have also been agreed to by Plaintiffs in (a) *Feezle v. Norfolk Southern* (Case No. 4:23-cv-00242) and (b) *Canterbury v. Norfolk Southern* (Case No. 4:23-cv-00298).

The parties have agreed that Plaintiffs' experts shall be permitted access to the derailment site (the "Site") for the purpose of collecting samples of grab samples of water and soil from the impacted areas as well as to collect wipe samples from various surfaces that may have come into contact with the spilled materials, burn and smoke residue, among others pursuant to the following agreement:

1. On February 28, 2023, Representatives from Norfolk Southern and Plaintiffs' and their experts accessed the Site to identify from where within the Site Plaintiffs wanted to take samples. Each side will create its own map of the general areas from where Plaintiffs want to collect samples and is not intended to identify the exact location of where samples will be collected;
2. The actual collection of samples shall begin on Wednesday March 1, 2023 (no later than 10:00am Eastern time) and carry over into Thursday March 2, 2023 should that be necessary;
3. This agreement only covers property that Norfolk Southern owns. Norfolk Southern does not have the authority to either permit or prevent access to and sampling from land it does not own. In the event that Plaintiffs identify for sample collection during the mapping process in paragraph 1 above, any land that Norfolk Southern does not own, Norfolk Southern will, if known, provide the identity of the landowner to Plaintiffs' counsel so that Plaintiffs may seek permission for access to collect samples if they so choose. Nothing in this agreement is designed to prevent Plaintiffs from collecting samples from any areas of the Site or obtaining permission to do so. While, Norfolk Southern does not have authority to grant access to third party property for soil or other sampling, Norfolk Southern will not withhold its consent to Plaintiffs' requests to sample third party property, nor engage in any action that discourages landowners from permitting such sampling.
4. Norfolk Southern shall be permitted to take duplicate samples from the same locations as those collected by Plaintiffs as long as doing so does not interfere with Plaintiffs' sample collection. At all locations within the site, Plaintiffs' experts shall be permitted to collect their sample first;
5. Plaintiffs shall be permitted to collect samples from soil stockpiles on March 1, 2023 and March 2, 2023;
6. Plaintiffs shall be permitted to collect samples from under Main Track 1 and Main Track 2, but such collection will not occur until after Norfolk Southern has "pulled up" each track and its substructure.
 - a. Norfolk Southern intends to pull up Main Track 1 and its substructure on March 1, 2023 and if this is completed before March 2, Plaintiffs shall be permitted to collect samples on March 2. Plaintiffs may test the substructure from the stock pile.
 - b. Norfolk Southern shall notify Plaintiffs once it has a date to begin to pull up Main Track 2 so that the parties can coordinate the collection of samples from under Main Track 2 at a future date.
 - c. In the event that soil collection from beneath these two tracks does not begin between March 1 and March 4, 2023 Norfolk Southern shall provide Plaintiffs with at least 48 hours' notice of when the area beneath the Track will be available for this collection to allow Plaintiffs' experts adequate time to travel to the Site and shall make the Site available for one full day for collection. This provision is designed to balance the need for remediation of the Site with the need for sample collection. In the event of unforeseen circumstances, the Parties shall work cooperatively to resolve any scheduling disputes. It is understood that Norfolk Southern will continue on-site activities at the Site during the day of collection.

Respectfully submitted,

s/ Melanie S. Bailey
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**pro hac vice pending or forthcoming*

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CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2023, I filed the foregoing **Joint Notice** with the Clerk using the CM/ECF System, which will send notification of such filing to all counsel of record in this matter.

DICKIE, McCAMEY & CHILCOTE, P.C.

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